

Lye Kim Hiang & Ors v Tan Ah Kaw & Ors

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A-02-660 OF 1998
GOPAL SRI RAM, ABDUL KADIR SULAIMAN AND ARIFIN JAKA JJCA
5 OCTOBER 2006

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Land Law — Acquisition of land — Compensation — Land held in undivided shares by co-proprietors — Part acquired held by appellants — Whether appellants entitled to whole compensation at the exclusion of other co-proprietors

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In 1966, one VK Kalyanasundaram and A Krishnan ('the acquirers') bought from Frederico Marco and Countes PIA Telfener a total of about 1250 acres of land in Larut, Perak ('the subject land'). The acquirers then entered into written agreements with various persons and sold off to one or more of them several undivided shares in the subject land. One such agreement was in issue and it was dated 23 August 1966 ('the said agreement'). At the material time, there were about 84 persons who had purchased undivided shares from the acquirers. It was not disputed that although the subject land was not partitioned, a plan was drawn up showing the lot of land held by each purchaser. Further, the boundaries between each of the lots of the several co-proprietors as shown on the map were strictly adhered to. In the course of time, a portion of what they regarded as their share in the subject land was acquired by the relevant authority. The compensation that was received from the relevant authority was shared among the co-proprietors. Later, another acquisition exercise took place. The issue arose as to whether the plaintiffs should be entitled to receive the compensation. Some of the co-proprietors took the position that the plaintiffs were not entitled to receive the whole of the compensation although, in accordance with the said agreement and the plan, it was only the plaintiffs' portion that was affected. In consequence, the plaintiffs took out an originating summons in essence claiming that they were solely entitled to the compensation payable by the appropriate authority. That summons was resisted by the defendants. The learned judge who heard the summons dismissed it. The plaintiffs appealed to the Court of Appeal.

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Held, allowing the appeal:

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- (1) The evidence on record revealed that the parties behaved towards each other over a considerable period of time in such a way as to recognise each other's rights to their respective portions on the subject land. Their acts and omissions and their 'actings' (*Sarat Chunder Dey v Gopal Chunder Laha* 19 IA 203) toward each other constitutes a course of conduct by which they accepted that despite their respective shares in the subject land being undivided, each was nevertheless entitled to assert right and title only over the particular portion whose boundaries were marked off in accordance with the said agreement and the plan in question. It was therefore now too late for the defendants to assert

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- A that they were not bound by the said agreement as they were not parties to it. It would be unfair or unjust to allow the defendants to go back on the common underlying assumption on which they and the plaintiffs have acted upon over all these years (see paras 4, 7); *Amalgamated Investment & Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd* [1982] QB 84 referred.
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- (2) However, as the plaintiffs will continue to remain as registered proprietors of their undivided share in the subject land despite the fact that their portion no longer exists after the latest acquisition, it would be unfair and unjust to the defendants to permit such a state of affairs to continue to exist. Accordingly, it
- C was only just that the plaintiff's be granted their remedy on terms that ensure justice to the defendants as well. On the particular and peculiar facts of this case, the court concluded that the plaintiffs should have the declaration of entitlement to the compensation on terms that their names be removed from the register and issue documents of title forthwith upon their receiving the
- D compensation they were justly entitled to as their undivided share in the subject land longer exists. The Registrar of Titles was directed to delete the memorials in the plaintiffs appearing on the register and the issue document of title under s 417 of the National Land Code 1965 (see paras 8–9).

Obiter:

- E It might appear at first blush that the relief granted appeared to cut across the indefeasibility rule housed in s 340 of the National Land Code 1965. But this was not the case. In this context it was unnecessary to recite the plethora of cases on the point. It more than sufficed to quote Raja Azlan Shah J (as he then was) in *Mercantile Bank Ltd v The Official Assignee of the Property of How Han Teh* [1969] 2 MLJ 196,
- F ie '... independent of our land legislation our courts have always recognised equitable and contractual interests in land...' (see para 10).

[Bahasa Malaysia summary]

- G Pada tahun 1966, VK Kalyanasundaram dan A Krishnan ('pemeroleh') telah membeli daripada Frederico Marco dan Countes PIA Telfener sejumlah lebih kurang 1250 ekar tanah di Larut, Perak ('tanah tersebut'). Pemeroleh kemudiannya memasuki perjanjian bertulis dengan beberapa orang dan menjual kepada satu atau lebih daripada mereka bahagian tidak berbahagi dalam tanah tersebut. Salah satu perjanjian tersebut merupakan isu di sini dan bertarikh 23 Ogos 1966 ('perjanjian tersebut'). Pada masa matan, terdapat lebih kurang 84 orang yang telah membeli bahagian tidak berbahagi daripada pemeroleh tersebut. Tidak dipertikaikan bahawa meskipun tanah tersebut tidak dibahagikan, satu pelan telah dibuat untuk menunjukkan lot tanah yang pegang oleh setiap pembeli. Bahkan, sempadan antara setiap lot beberapa pemilik bersama seperti yang ditunjukkan atas pelan itu dipatuhi.
- H Masaberlalu dan sebahagian daripada apa yang mereka anggap bahagian mereka dalam tanah tersebut telah diperoleh oleh pihak berkuasa yang berkaitan. Pampasan yang diterima daripada pihak berkuasa tersebut telah dibahagi antara pemilik bersama. Berikutan itu, satu pemerolehan telah berlaku. Isu yang timbul adalah berhubung sama ada plaintiff-plaintiff patut berhak menerima pampasan. Beberapa pemilik bersama berpendapat bahawa plaintiff-plaintiff tidak berhak
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menerima keseluruhan pampasan tersebut meskipun, menurut perjanjian dan pelan tersebut, hanya bahagian plaintif-plaintif sahaja yang terjejas. Berikutan itu, plaintif-plaintif telah mengeluarkan satu saman pemula menuntut bahawa mereka secara mutlaknya berhak mendapat pampasan yang dibayar oleh pihak berkuasa bersesuaian. Saman tersebut telah ditentang oleh defendan-defendan. Hakim bijaksana yang mendengar saman tersebut telah menolaknya. Plaintif-plaintif telah merayu ke Mahkamah Rayuan.

Diputuskan, membenarkan rayuan tersebut:

- (1) Keterangan atas rekod menunjukkan bahawa pihak-pihak mempunyai hubungan baik antara satu sama lain dalam satu tempoh tertentu sehingga dapat mengenali hak masing-masing ke atas bahagian masing-masing atas tanah tersebut. Tindakan dan peninggalan mereka dan 'lakonan' mereka (*Sarat Chunder Dey v Gopal Chunder Laha* 19 IA 203) terhadap satu sama lain membentuk satu tindakan yang mana mereka telah menerima bahawa meskipun bahagian masing-masing dalam tanah tersebut tidak dibahagikan, namun masing-masing berhak menegaskan hak dan hak milik ke atas bahagian tertentu yang mana sempadan telah ditandakan menurut perjanjian dan pelan yang dipersoalkan itu. Oleh itu ia adalah terlambat kini untuk defendan-defendan menegaskan bahawa mereka tidak terikat oleh perjanjian tersebut kerana mereka bukan merupakan pihak-pihak kepadanya. Adalah tidak adil untuk membenarkan defendan-defendan untuk berbalik kepada andaian biasa yang mana mereka dan plaintif-plaintif telah bertindak selamanya (lihat perenggan 4, 7); *Amalgamated Investment & Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd* [1982] QB 84 dirujuk.
- (2) Bagaimanapun, memandangkan plaintif-plaintif akan kekal sebagai pemilik berdaftar bahagian tidak berbahagi dalam tanah tersebut meskipun pada hakikatnya bahagian mereka tidak lagi wujud selepas pemerolahan terakhir, ia adalah tidak adil kepada defendan-defendan untuk membenarkan keadaan sedemikian berterusan. Sewajarnya, ia adalah adil agar plaintif-plaintif diberikan remedi berdasarkan keadilan terlaksana terhadap defendan-defendan juga. Berdasarkan fakta-fakta tertentu dan tersendiri kes ini, mahkamah memutuskan bahawa plaintif-plaintif patut membuat deklarasi hak terhadap pampasan berdasarkan nama-nama mereka dialihkan daripada buku daftar dan surat ikatan hak milik setelah mereka menerima pampasan yang mereka dengan adil berhak memperoleh memandangkan bahagian tidak berbahagi mereka dalam tanah tersebut tidak lagi wujud. Pendaftar Hak Milik telah diarahkan untuk memotong nama-nama plaintif-plaintif yang terdapt dalam buku daftar dan surat ikatan hak milik di bawah s 417 Kanun Tanah Negara 1965 (lihat perenggan 8–9).

Obiter:

Pada mulanya ia kelihatan bahawa relief telah diberikan untuk mengatasi rukun yang tidak boleh disangkal dalam s 340 Kanun Tanah Negara 1965. Namun ini tidak berlaku dalam kes ini. Dalam konteks ini, ia tidak perlu memetik kes-kes berkenaan. Lebih sesuai untuk memetik kata-kata Raja Azlan Shah J (beliau pada ketika itu) dalam *Mercantile Bank Ltd v The Official Assignee of the Property of How Han Teh*

- A [1969] 2 MLJ 196, iaitu ‘... independent of our land legislation our courts have always recognised equitable and contractual interests in land...’. (lihat perenggan 10).]

Notes

- B For cases on compensation for acquisition of land, see 8(2) *Mallal’s Digest* (4th Ed, 2006 Rissue) paras 1843–1875.

Cases referred to

- Amalgamated Investment & Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd* [1982] QB 84 (refd)
- C *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 22 (refd)
- Mercantile Bank Ltd v The Official Assignee of the property of How Han Teh* [1969] 2 MLJ 196 (refd)
- Sarat Chunder Dey v Gopal Chunder Laha* 19 IA 203 (refd)
- Solle v Butcher* [1950] 1 KB 671 (refd)
- D *Yeoman’s Row Management Ltd & Anor v Cobbe* [2006] EWCA Civ 1139 (refd)

Legislation referred to

National Land Code 1965 ss 340, 417

- E *S Theivanthiran (A Mariadass with him) (Thevin Chandran & Associates) for the appellant.*
- Saranjit Singh (AS Saini & Associates) for the respondent.*

Gopal Sri Ram JCA (delivering judgment of the court):

- F [1] This case has a long history. It begins in 1966. In that year, one VK Kalyanasundaram and A Krishnan (‘the acquirers’) bought from Frederico Marco and Countes PIA Telfener a total of about 1250 acres of land in Larut, Perak (‘the subject land’). It appears that the acquirers then entered into written agreements with various persons and sold off to one or more of them several undivided shares in the subject
- G land. One such agreement is in issue in this case. It is dated 23 August 1966. It will be referred to in this judgment as ‘the said agreement’. It may also be mentioned that so far as this case is concerned, at the material time there were about 84 persons who had purchased undivided shares from the acquirers. Although the subject land was not partitioned, a plan was drawn up showing the lot of land held by each purchaser.
- H Further, the boundaries between each of the lots of the several co-proprietors as shown on the map were strictly adhered to on the ground. It is clear that for a great many years all the several co-proprietors behaved towards each other as if they were mutually bound by the several individual agreements entered into by each of them with the acquirers. It is also in evidence that over a long period of time the
- I co-proprietors treated themselves as bound by the notional subdivision that had taken place as binding on him or her as well as his or her successors. There is evidence that many, if not all, those who acquired undivided shares in the subject land from the acquirers went into possession and cultivated each of their individual lots. For completeness, it may lastly be mentioned that each of the undivided share of the respective purchasers was in fact registered.

[2] It is against this historical background that the plaintiffs' case must be viewed. And their case is this. By the said agreement, they and one Lai Gim Kuay, deceased purchased an undivided share in the subject land pursuant to and under the terms and conditions of the said agreement. In the course of time, a portion of what they regarded as their share in the subject land was acquired by the relevant authority. The compensation that was received from the relevant authority was shared among the co-proprietors whose lots were affected as delineated in the plan in question and in recognition of each of their respective rights.

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[3] Later, in March 1998, another acquisition exercise took place. This resulted in what remained of the plaintiffs' portion of the subject land being wholly acquired by the appropriate authority. But their names continued to remain on both the issues and the register documents of title. That is because they were all registered as co-proprietors of undivided shares in the whole of the subject land. When, on this occasion, the issue arose as to whether the plaintiffs would be entitled to receive the compensation some of the co-proprietors took the position that the plaintiffs were not entitled to receive the whole of the compensation although, in accordance with the said agreement and the plan, it was only the plaintiffs' portion that was affected. But there were others who were in agreement with the plaintiffs. In consequence, the plaintiffs took out an originating summons in essence claiming that they were solely entitled to the compensation payable by the appropriate authority. That summons was resisted by the defendants. The learned judge who heard the summons dismissed it. The plaintiffs then appealed to this court.

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[4] The position in this case is clear enough. The evidence on record reveals that the parties to these proceedings behaved towards each other over a considerable period of time, some 30 years or more in such a way as to recognise each other's rights to their respective portions on the subject land. Their acts and omissions or to borrow the more compendious term employed by Lord Shand in *Sarat Chunder Dey v Gopal Chunder Laha* 19 IA 203, their 'actings' toward each other constitutes a course of conduct by which they accepted that despite their respective shares in the subject land being undivided, each was nevertheless entitled to assert right and title only over the particular portion whose boundaries were marked off in accordance with the said agreement and the plan in question. It is therefore now too late for the defendants to assert; as they have done in the court below and in this court that they are not bound by the said agreement as they are not parties to it. Indeed, it would be manifestly unjust for the defendants to make such an assertion.

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[5] The rights of the parties to this appeal must accordingly be determined by principles 'substantially equitable' to borrow the words of Sir Barnes Peacock when delivering the advice of the Board in *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 22 at p 239. And the equitable doctrine that falls to be applied in the present instance is that of estoppel as expounded by Lord Denning in *Amalgamated Investment & Property Co Ltd (in liquidation) v Texas Commerce International Bank Ltd* [1982] QB 84:

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When the parties to a transaction proceed on the basis of an underlying assumption; either of fact or of law; whether due to misrepresentation or mistake makes no difference; on which they have conducted the dealings between them; neither of them will be allowed to go back on that

A *assumption when it would be unfair or unjust to allow him to do so.* If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands. (Emphasis added.)

B [6] The flexibility of the doctrine of estoppel has been very recently recognised and affirmed by the English Court of Appeal in *Yeoman's Row Management Ltd & Anor v Cobbe* [2006] EWCA Civ 1139 (judgment handed down on 31 July 2006) where Mummery LJ said: 'A doctrine designed to grant relief for unconscionable conduct covers a wide spectrum of situations and needs to be flexible.'

C [7] Applying well established principles to the peculiar facts of this case, it is crystal clear that it would be unfair or unjust to allow the defendants to go back on the common underlying assumption on which they and the plaintiffs have acted upon over all these years. The defendants therefore cannot say that they are not parties to the said agreement and are consequently bound by it or by the plan. They cannot be allowed to assert their legal rights as registered co-proprietors of undivided shares in the subject land because it would be unjust for them to do so.

E [8] But that is not the end of the matter. As matters stand, the plaintiffs will continue to remain as registered proprietors of their undivided share in the subject land despite the fact that their portion no longer exists after the latest acquisition exercise. It would be unfair and unjust to the defendants to permit such a state of affairs to continue to exist. Accordingly, it is only just that the plaintiff's be granted their remedy on terms that ensure justice to the defendants as well. Here is where equity demonstrates its flexibility in the sphere of judicial remedies. Traditionally, Courts of Equity have fashioned relief to ensure a just and equitable result (see for example, *Solle v Butcher* [1950] 1 KB 671, where the tenant of premises was granted declaratory relief on terms.

G [9] On the particular and peculiar facts of this case, the court concluded that the plaintiffs should have the declaration of entitlement to the compensation on terms that their names be removed from the register and issue documents of title forthwith upon their receiving the compensation they are justly entitled to as their undivided share in the subject land longer exists. So, for the reasons already given the appeal was allowed. Acting under s 417 of the National Land Code 1965 ('the Code'), the Registrar of Titles was directed to delete the memorials in their favour appearing on the register and the issue document of title. No order as to costs was made by reason of the peculiar circumstances of this case.

I [10] A few words in conclusion. It may appear at first blush that the relief granted appears to cut across the indefeasibility rule housed in s 340 of the Code. But this is not the case. And in this context, it is unnecessary to recite the plethora of cases on the point. It more than suffices to quote Raja Azlan Shah J (as he then was) said in *Mercantile Bank Ltd v The Official Assignee of the property of How Han Teh* [1969] 2 MLJ 196:

The official assignee's view is not correct, *Vallipuram's* case is against him. He forgets that independent of our land legislation our courts have always recognised equitable and

contractual interests in land (see *Loke Yew v Port Swettenham Rubber Co* [1913] AC 491; Innes 202 SC (see also s 206(3) of the National Land Code).

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Appeal allowed.

Reported by Peter Ling

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